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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/851,722	05/08/2001	Theodore F. Rabenko	2875.0970002	3641

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1100 NEW YORK AVENUE, N.W.  
WASHINGTON, DC 20005

EXAMINER
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SHAND, ROBERTA A

ART UNIT	PAPER NUMBER
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2472

MAIL DATE	DELIVERY MODE
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11/23/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/851,722	<b>Applicant(s)</b> RABENKO ET AL.	
	<b>Examiner</b> Roberta A. Shand	<b>Art Unit</b> 2472	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 21-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21-30 is/are allowed.
- 6) ☒ Claim(s) 31-34, 36, 37 and 39 is/are rejected.
- 7) ☒ Claim(s) 35 and 38 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C.

102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

3. Claims 31-34, 36, 37 and 39 are rejected under 35 U.S.C. 102(e) as being anticipated by Mikhak (U.S. 7149474 B1).

4. Regarding claim 31, Mikhak teaches a method for translating a packet payload from a first communications protocol to either a second communications protocol or a third communication protocol, comprising: (a) determining whether the packet payload is one of a voice packet or a data packet (fig. 2, 1160 and col. 6, lines 22-25); (b) translating the packet payload from the first communications protocol to a second communications protocol (col. 4, lines 35-44); (c) determining whether the packet payload is to be formatted according to a third

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communications protocol or a fourth communications protocol when the packet payload is the voice packet (col. 4, lines 59-64); (d) translating the packet payload from the second communications protocol to the third communications protocol when the packet payload is the voice packet that is to be formatted according to the third communications protocol or is the data packet (col. 4, line 65 – col. 5, line 3); and (e) translating the packet payload from the second communications protocol \ to the fourth communications protocol when the packet payload is the voice packet that is to be formatted according to the fourth communications protocol (col. 5, lines 4-8).

5. Regarding claim 32, Mikhak teaches (col. 11, lines 1-14) translating the packet payload from a Data Over Cable Service Interface Specification (DOCSIS) communications protocol to the second communications protocol.

6. Regarding claim 33, Mikhak teaches (col.5, lines 4-8) translating the packet payload from the second communications protocol to a Home Phoneline Network Alliance (HomePNA) communications protocol.

7. Regarding claim 34, Mikhak teaches (col.5, lines 1-11) translating the packet payload from the second communications protocol to a baseband protocol capable of delivering Plain Old Telephone Service (POTS) to one or more analog telephones.

8. Regarding claim 36, Mikhak teaches (col.11, lines 22-32) translating the packet payload from the first communications protocol to an internal communications protocol, the internal

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communications protocol being independent of the first communications protocol, the third communications protocol, and the fourth communications protocol.

9. Regarding claim 37, Mikhak teaches (col.11, lines 34-39) determining whether the packet payload is to be formatted according to a third communications protocol or a fourth communications protocol when the packet payload is the voice packet based upon a destination address.

10. Regarding claim 39, Mikhak teaches (col.11, lines 1-14) formatting the packet payload according to the third communications protocol to translate the packet payload from the second communications protocol to the third communications protocol.

***Allowable Subject Matter***

11. Claims 21-30 are allowed

12. The following is an examiner's statement of reasons for allowance: the prior art does not teach or fairly suggest a communications gateway, configured to receive a packet payload, the packet payload being formatted according to a first communications protocol, comprising: a ***Media Access Controller/Physical Layer Interface (MAC/PHY) configured to determine whether the packet payload is one of a voice packet or a data packet and to translate the packet payload from the first communications protocol to a second communications protocol;*** a proxy gateway configured to determine whether the packet payload is to be formatted according to a

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third communications protocol or a fourth communications protocol when the packet payload is the voice packet; a controller configured to translate the packet payload from the second communications protocol to the third communications protocol when the packet payload is the voice packet that is to be formatted according to the third communications protocol or is the data packet; and a processor configured to translate the packet payload from the second communications protocol to the fourth communications protocol when the packet payload is the voice packet that is to be formatted according to the fourth communications protocol, as recited in independent claim 21.

13. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled “Comments on Statement of Reasons for Allowance.”

14. Claims 35 and 38 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

15. Applicant's arguments filed September 9, 2010 have been fully considered but they are not persuasive. Applicant argues that Mikhak does not teach or suggest at least the feature of

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"translating the packet payload from the first communications protocol to a second communications protocol" as recited by independent claim 31. Applicant is directed to col. 4, lines 35-44 where Mikhak recites the residential gateway converts physical protocol used for the IP network (Applicant's first communications protocol) to the HomePNA (Applicant's second communications protocol). Mikhak also recites an alternative embodiment where the second communications protocol is that used for LAN backbone.

16. Applicant also argues that nowhere does Mikhak teach or suggest that the packetized voice delivered over the IP streams is converted to a different communication protocol before conversion to the HomePNA protocol and/or the POTS protocol as recited by independent claim 31. In response to this argument, said limitation is not in claim 31. Applicant is arguing a limitation that is not in claim 31. Although Applicant is arguing four specific protocols that are not in the claims, Mikhak does teach all four protocols (col. 4, line 35 – col. 5, line 8).

### ***Conclusion***

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roberta A. Shand whose telephone number is (571)272-3161. The examiner can normally be reached on M-F 9:00am-5:30pm.

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18. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Trost can be reached on 571-272-7872. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

19. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Roberta A. Shand  
/R. A. S./  
Examiner, Art Unit 2472

/William Trost/  
Supervisory Patent Examiner, Art Unit 2472